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IN THE

Supreme Court of the United States

October Term, 1972

No. 71-1559

R. E. BAXTER, *et al.*,

Petitioners,

v.

RAILWAY EXPRESS AGENCY, INCORPORATED, a/k/a REA EXPRESS; BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES; H. H. PHILLIPS, GENERAL CHAIRMAN OF BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES,

Respondents.

SUPPLEMENTAL BRIEF FOR PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

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BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.

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Petitioners[1] pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above-entitled case on February 18, 1972.

[1] The petitioners are R. E. Baxter and 243 other persons, former employees of REA and members of Local 2100, Brotherhood of Railway, Airline and Steamship Clerks.

Opinion Below

The opinion of the Court of Appeals, printed in Appendix A, is not reported at this time. The decision and order of the District Court, printed in Appendix B, is not reported.

Jurisdiction

The judgment of the Court of Appeals was dated February 18, 1972 (Appendix "A"). The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254 (1).

Questions Presented

1. Do the Federal Courts have jurisdiction over the subject matter of a suit by employees of a railroad carrier against their union and employer for failure to give fair representation, hostile and discriminatory treatment and wrongful discharge.
2. Did the District Court abuse its discretion in granting dismissal and summary judgment.

Statutes Involved

The statutory provisions principally involved are Section 3 First (i) of the Railway Labor Act (45 U. S. C., Sec. 153 First (i)), quoted at page 2 of petition.

Preliminary Statement

Petitioners plaintiffs are former members of Local #2100 Brotherhood of Railway, Airline and Steamship Clerks. They were employees of defendant Railway Express Agency, Inc. in the Cleveland, Ohio, area until July 27, 1969.

On July 27, 1969, defendant Railway Express Agency, Inc. discontinued most of its work in the Cleveland, Ohio area and this work was transferred to the Columbus, Ohio and Cincinnati, Ohio, areas.

Under Rule 12 b of the labor agreement, between defendants, Brotherhood, and defendants, R. E. A. Express, Inc., employees affected by the transfer of work are to be allowed to exercise their seniority in the areas to which the work is transferred. Rule 12 c, d, e and f set forth the procedure to be followed.

Prior to the date of transfer of the work from Cleveland to Columbus and Cincinnati areas, the defendants, RAILWAY EXPRESS AGENCY, INCORPORATED, BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, and H. H. PHILLIPS, entered into an agreement wherein plaintiffs were unfairly discriminated against in that the benefits due the plaintiff employees under Rule 12 were unlawfully disregarded. Plaintiff employees in the Cleveland, Ohio, area were dismissed by defendants, RAILWAY EXPRESS AGENCY, INCORPORATED, and the defendants BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, and H. H. PHILLIPS, refused to enforce the dismissed employees' rights under the collective bargaining contract.

A complaint was filed in the District Court for the Northern District of Ohio joining as defendants the Union, H. H. PHILLIPS, an officer of the Union and RAILWAY EXPRESS AGENCY, INCORPORATED.

The gravamen of the allegations contained in the complaint is wrongful discharge, hostile discrimination, and a breach of the Unions duty to fairly represent a minority group of its members through collusion with the defendant employer.

Motions to dismiss the complaint were filed by R. E. A. EXPRESS, INC. and by the Union defendants. The District

Court found a lack of federal jurisdiction over the subject matter and granted summary judgment.

Plaintiffs did not file an amended complaint but appealed the decision of the District Court.

The Court of Appeals affirmed this decision on the ground that plaintiffs had failed to file opposing affidavit sufficient to raise an issue of fact; and that the Court lacked jurisdiction for failure of plaintiffs to exhaust their administrative remedies.

Reply to Respondents' First Argument

There was good cause for petition to be filed after expiration of time.

The appellants respectfully asks the Court to consider the following facts in deciding whether the time had expired on filing the appellants' petition for certiorari. The material to be printed was delivered to the printer on Tuesday morning, May 16, 1972. It was understood that said printer would have completed the printing and binding and mail the copies of appellants' brief to the Court for docketing on Tuesday evening, May 16, 1972. The petition would then have been filed Wednesday, May 17 or Thursday, May 18, 1972. Due to a misunderstanding at the printers, the petition was not mailed until Thursday, May 18, 1972, and subsequently filed on Saturday, May 20, 1972. A letter of A. Gerald Kleps, president of the Batavia Times Publishing Company is found in Appendix A.

Reply to Respondents' Second Argument

The Petition does present important questions of Federal Law.

The respondent seeks to catagorize the present case as a "minor" dispute pursuant to a decision of the 2nd Circuit

in *BRAC Local Lodge 2144 v. REA Express*, 409 F. 20 312 (page 6 of respondent's brief). Such classification is unsound. In that case the entire Local Lodge had applied for an injunction against REA Express to prohibit REA from re-routing traffic from Buffalo to Albany. The injunction was granted and REA appealed. In the present case, individual employees sue the employer, REA, and the Union, BRAC, alleging: "hostile discrimination, wrongful discharge and collusion. While what was originally involved was the proposed re-routing of traffic the instant case is in no other way similar to *BRAC Local Lodge 2144 v. REA Express, supra.*

Respectfully submitted,

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APPENDIX A

THE BATAVIA TIMES PUBLISHING CO.
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BATAVIA, N. Y. 14020
June 29, 1972

Collins & Collins
Attorneys at Law
464 Statler Hilton Hotel
Buffalo, New York 14202

Att: John T. Collins

Re: R. E. Baxter, *et al.*,

v.

Railway Express Agency, Inc., *et al.*

Dear Mr. Collins:

This is to advise that we did receive your petition for Writ of Certiorari in the United States Supreme Court on the Morning of May 16. There was an agreement that we would ship your petition late that afternoon and we would attend to service and filing. The writer left for Buffalo

for an appointment with an attorney that day and the message did not get conveyed properly. Therefore, the petitions were shipped on May 18.

We apologize for the inconvenience.

Very truly yours,

THE BATAVIA TIMES PUB. CO.

By A. GERALD KLEPS

MK

AGK:cr